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Supreme Court of the United States.

OCTOBER TERM, 1968.

No. 455

ANTHONY CAPERCI ET AL.,
Petitioners,
v.
EARL P. HUNTOON, JR., ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT.

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Opinions Below.

The judgment of the District Court (R. 108-111) is set forth in Appendix A hereto. The opinion of the Court of Appeals is set forth in Appendix B hereto.

Jurisdiction.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Judgment of Court of Appeals.

The judgment of the Court of Appeals sought to be reviewed (Appendix C hereto) was dated and entered July 11, 1968.

Question Presented for Review.

Whether or not punitive damages are recoverable in a civil action based upon a violation of the Civil Rights Act of 1871 which occurred in Massachusetts.

Statutes Involved.

Title 42 U.S.C. § 1983, provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

Title 42 U.S.C. § 1988, provides that in civil rights cases the United States District Courts shall have jurisdiction for the protection and vindication of the civil rights of all persons and shall exercise that jurisdiction "in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil

or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause . . ."

Statement of the Case.

A. Proceedings Below.

The petitioners were the defendants in a civil action brought by the respondents under the provisions of Title 42 U.S.C. § 1983, alleging deprivation of rights, privileges and immunities secured by the Constitution of the United States.

After a lengthy jury trial, which commenced on December 4, 1967, verdicts were returned against the petitioners in the aggregate sum of $33,502, of which the amount of $12,500 was assessed by way of punitive damages.

An appeal was taken to the Court of Appeals, and on July 11, 1968, the Court of Appeals affirmed the judgment of the District Court.

B. Facts Material to the Question.

The petitioners at all times material hereto were members of the Police Department of the City of Quincy (R. 4-35). The respondent Earl P. Huntoon, Jr., was, when this incident took place, a Sergeant in the Police Department of the City of Quincy. On October 14 and 16 of 1960 various of the petitioners at various times (three in all) went to the home of Sergeant Huntoon and conducted searches. On the third visit a large number of articles were seized. A warrant was obtained for the first search; no warrant was used in the second and third. At the time the searches took place, the respondent Earl P. Huntoon,

Jr., was being detained and questioned at Police Headquarters, and the respondent Louise Huntoon was at the home and opened the door for the petitioners on each occasion. At the trial it was admitted by the respondents' attorney that probable cause existed for the issuance of the warrant covering the first search.

There was no evidence of any physical violence, humiliation or other reprehensible conduct on the part of any of the petitioners other than, of course, the elements of the searches and seizures themselves. Louise Huntoon testified that "they conducted themselves like gentlemen."

Argument.

Title 42 U.S.C. § 1983, is completely silent as to the kind of damages that may be awarded a plaintiff under the Civil Rights Act.

Section 1988 of Title 42 U.S.C. seems quite explicit in granting to the State wherein the Court having jurisdiction is held to furnish suitable remedies for violations of the civil rights of all persons where the laws of the United States are deficient.

The power is vested in the legislative branch of our Government to make, ordain and establish all manner of wholesome and reasonable laws, statutes and ordinances, either with penalties or without, not repugnant to the Constitution, as they shall judge to be for the good and welfare of the state and the subjects of the same.

Commonwealth v. *Alger*, 7 Cush. 53, 85.

In *Basista* v. *Weir*, 340 F. 2d 74 (3d Cir. 1965), it was held that, although the Civil Rights Act did not so provide, it was intended that the benefits of the civil-rights

statutes be uniform throughout the United States, and that federal common law is applied in respect to compensatory or even nominal damages as well as to exemplary damages, and that the federal law permits the recovery of exemplary damages.

The rationale of this decision is consistent with the view of the United States Supreme Court in its decision in *Swift* v. *Tyson*, 16 Pet. 1, 10 L. ed. 865 (1842), but this doctrine of *Swift* v. *Tyson* was specifically overruled and abrogated in *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64, 58 S. Ct. 817 (1938).

In *Erie Railroad Co.* v. *Tompkins* (*supra*) this Court said (p. 78): "There is no federal general common law. Congress has no power to declare substantive rules of common law applicable in a State whether they be local in their nature or 'general,' be they commercial law or a part of the law of torts. And no clause in the Constitution purports to confer such a power upon the federal courts."

It is submitted that the decision in *Basista* v. *Weir* (*supra*) is in conflict with that principle.

In Massachusetts exemplary damages are not allowed unless authorized by statute.

Ellis v. *Brockton Publishing Co.*, 198 Mass. 538, 543.

Lowell v. *Massachusetts Bonding & Insurance Co.*, 313 Mass. 257, 269.

"Punitive Tort Damages in New England," 41 B.U. Law Rev. 389.

Boott Mills v. *Boston & Maine Railroad*, 218 Mass. 582.

To make provision for the measure of damages that can be recovered under a federal statute is a legislative function with which the Congress is not unfamiliar.

The Tort Claims Act, 28 U.S.C. § 2674, provides:

> "The United States shall be liable . . . in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.
>
> "If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof."

Under the Tort Claims Act the existence of liability of the United States is to be determined by local law.

The fact that there is no uniformity among the states as to the allowable maximum recoveries under the Tort Claims Act and that substantial differences in recovery existed was not thought to be of importance.

Massachusetts Bonding & Insurance Co. v. *United States*, 352 U.S. 128, 134.

Conclusion.

The Court of Appeals looks to the federal common law for the answer to the issue of punitive damages.

It is submitted that by 42 U.S.C. § 1988, the Congress provided that the remedy for violation of the Civil Rights Act should be measured by local law.

Local law does not provide for exemplary (punitive) damages unless specifically authorized by statute. No such statute exists, either at the federal or at the state level.

Petitioners therefore respectfully urge this Court to grant the instant petition.

August 23, 1968.

Respectfully submitted,

ARTHUR V. GETCHELL,
160 North Washington Street,
Boston, Massachusetts 02114.

Of Counsel:
RAYMOND F. BARRETT,
STEPHEN T. KEEFE, JR.

Appendix A.

Judgment of the District Court.

[December 28, 1967.]

GARRITY, D.J.

After trial, and in accordance with the Special Verdicts of the jury, it is ordered that the Plaintiff, Earl P. Huntoon, Jr., recover from the following defendants jointly the following amounts:

Leo Antonelli and Anthony Caperci	—	$ 1.00
John E. Wuerth and Dante A. Pettinelli	—	1.00
Paul Lahive, Gordon E. Parry, Leo Antonelli, Dante A. Pettinelli, Raymond A. Haskell, and John E. Wuerth	—	5,000.00
		$5,002.00

To recover severally, the following amounts:

Leo Antonelli	$ 500.00
John E. Wuerth	5,000.00
Paul Lahive	1,000.00
Gordon E. Parry	500.00
Dante A. Pettinelli	500.00
	$7,500.00
Total	$12,502.00

Dated at Boston, Massachusetts this 28th day of December, 1967.

By the Court,
RUSSELL H. PECK, Clerk
By: KATHLEEN M. DOLAN
Deputy Clerk

W. ARTHUR GARRITY, JR.
United States District Judge

Judgment of the District Court.

[December 28, 1967.]

GARRITY, D.J.

After trial, and in accordance with the Special Verdicts of the jury, it is ordered that the Plaintiff, Louise Huntoon, recover from the following defendants jointly the following amounts:

Leo Antonelli and Anthony Caperci	$ 1,000.00
John E. Wuerth and Dante A. Pettinelli	5,000.00
Paul Lahive, Gordon E. Parry, Leo Antonelli, Dante A. Pettinelli, Raymond A. Haskell, and John E. Wuerth	10,000.00
	$16,000.00

To recover severally, the following amounts:

Leo Antonelli	$ 500.00
John E. Wuerth	2,500.00
Paul Lahive	1,000.00
Gordon E. Parry	500.00
Dante A. Pettinelli	500.00
	$ 5,000.00
Total	$21,000.00

Dated at Boston, Massachusetts, this 28th day of December, 1967.

By the Court,
RUSSELL H. PECK, Clerk
By: KATHLEEN M. DOLAN
Deputy Clerk

W. ARTHUR GARRITY, JR.
United States District Judge

Appendix B.

Opinion of the Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7092.

ANTHONY CAPERCI ET AL.,
DEFENDANTS, APPELLANTS,
v.
EARL P. HUNTOON, JR., ET AL.,
PLAINTIFFS, APPELLEES.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Before ALDRICH, *Chief Judge.*
McENTEE and COFFIN, *Circuit Judges.*

Raymond F. Barrett, with whom *Stephen T. Keefe, Jr.,* was on brief, for appellants.

Paul T. Smith, with whom *Manuel Katz* was on brief, for appellee.

July 11, 1968.

PER CURIAM. Plaintiff Huntoon in October 1960 was a sergeant on the police force of the City of Quincy. A serious difference of opinion (whether personal, or in the line of duty, depends upon whose testimony one accepts) arose between him and other members of the force. On October 14 he was arrested and detained at the police station. Other members of the force, supported by a warrant, then visited his home and conducted a search. The search markedly exceeded the bounds of the warrant. Nothing was taken.

At 10:30 that evening two members of the police force, accompanied by a civilian, returned to plaintiff's home and demanded admission. Upon being admitted they searched the deep freezer in the basement. Again, nothing was taken. Later, at 1:30 a.m., a substantial number of police officers came to plaintiff's home and demanded admission. At this time they conducted a rigorous search and removed over 200 articles, ranging from shoe laces and shirts to pencils and tools. Concededly, on neither of these latter occasions did they have a warrant or any probable cause entitling them to obtain one. Much less did they have a right to enter and search, unless upon actual consent.

While plaintiff remained in custody, in his home during all three searches were his wife, the co-plaintiff herein, and a 14-year old daughter. In due course the plaintiffs brought the present action for violation of civil rights, 42 U.S.C. § 1983, against all the police officers participating. After an extensive trial the jury returned a number of special verdicts in favor of the plaintiffs to the effect that no consent had been given, and for general and punitive damages.[1] On this appeal defendants briefed a number of matters, but at oral argument waived all issues except damages. This, in turn, must mean punitive damages; we perceive no other question.

On the issue of punitive damages under the Civil Rights Act of 1871 there is no great amount of authority. It is true that in Massachusetts punitive damages are not normally recoverable.[2] However, we believe, on balance, that

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[1] Some special verdicts were in favor of some defendants. As to these no questions are raised.

[2] Or, as has been said, are not recoverable "unless authorized by statute." *Lowell* v. *Massachusetts Bonding & Ins. Co.*, 1943, 313 Mass. 257, 269. See also Note, Punitive Tort Damages in New England, 41 B.U. L. Rev. 389, 390 (1961).

the remedial purpose of the Act is better served by not permitting local variations allowing diminution of the amount of recovery. Rather, we will look to federal common law. *Basista* v. *Weir*, 3 Cir., 1965, 340 F. 2d 74; *Mansell* v. *Saunders*, 5 Cir., 1967, 372 F. 2d 573; *cf. J. I. Case Co.* v. *Borak*, 1964, 377 U.S. 426.

As to whether punitive damages were warranted in this case, defendants argue that police officers "acting in good faith and with no evil intent . . . should not be subject . . . to punitive damages." We agree with the principle. There was ample evidence, however, warranting a finding that the defendants did not come within it. The female plaintiff's concession that defendants "acted like gentlemen" did not mean that their conduct was not an outrageous invasion of plaintiffs' privacy without color of right and for an improper motive. The court instructed the jury with care. There was no error.

Affirmed.

Appendix C.

Judgment of the Court of Appeals.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 7092

ANTHONY CAPERCI ET AL.,
Defendants, Appellants,
v.
EARL P. HUNTOON, JR., ET AL.,
Plaintiffs, Appellees.

JUDGMENT

July 11, 1968

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The orders of the District Court are affirmed.

By the Court:
ROGER A. STINCHFIELD
Clerk.